**Project Proposal Synopsis**

# *A Review of the Legal Status of Metis Treaties in Canada*

Larry Chartrand

I intend to examine existing Treaties between Metis communities and the Crown as well as between Metis and First Nations. I intend to assess their legal status from several perspectives (inter-cultural, common law/constitutional, and international). I also intend to assess potential outstanding treaty obligations the Crown has towards Metis communities with a particular focus on the Metis of Wood Mountain/Willowbunch area.

With respect to the prairies, I would like to examine the case of a Metis community that was not part of the Manitoba Agreement (Treaty) to determine if there is an ongoing obligation to enter into a treaty for resolving claims to land or other interests. Certain questions emerge such as the following:

1. At what level of polity within Metis society on the prairies does the authority lie to enter into treaty with the Crown? Is it at the Metis community level, regional, provincial or nation level? The traditional ethos of independence suggests that Metis society was historically very decentralized which suggests authority would lie locally. However, contemporary Metis organization is structured largely along provincial lines, although with strong local autonomy (largely due to a history of locals being independent non-profit corporations). Aboriginal rights doctrine has been unclear. Claims have been asserted on a nation level (*Gitskan nation*, *Tshilqot'in*) or at a community level (*Powley*). International principles speak of rights belonging to Indigenous peoples. A review of the various approaches to defining the appropriate level of social organization for asserting claims will be made and opinions will be made based on a Metis critical theory perspective.

2. To what extent could the *Dominion Lands Act* extinguish Metis title to lands in areas outside of the *Manitoba Act*? Was the *Dominion Lands Act* constitutional in its intent to extinguish the "Indian title" of the Metis? Was such unilateral extinguishment contrary to the Royal Proclamation, or constitutional principles akin to the obligations in the Royal Proclamation (*Sarnia*). The Northwestern Territories Order in Council arguably adopted the principle of consent when Canada alledgedly purported to purchase Rupertsland. If so, the Crown was bound to treat with the Metis and not ignore their political independence. If so, what implications does the *MMF* case have regarding the Honour of the Crown on the nature of this obligation today?

What legal significance is the participation of Metis in receiving scrip? Can it be seen as a form of implicit agreement (*Temagami)* to extinguish title for scrip?

If extinguishment of lands was valid, what of Aboriginal rights to resource use?

The federal government's current proposal for a broadened mandate for comprehensive claims is intended to address outstanding claims under s.35 and is not limited to land claims issues. To what extent is this policy intended to apply to Metis communities with outstanding claims (land and resources or resources only)?

3. In territories outside the intended application of the *Dominion Lands Act*, east of Manitoba where there was no express intent to extinguish title by legislation in exchange for scrip, are there outstanding Metis specific claims to land or resources that have yet to be negotiated or surrendered? What of the Great Lakes Metis that joined treaty? What of the Fort Frances Metis that adhered to Treaty 3?

The answer to these questions include a review of the development of Metis claims in areas now part of Ontario. These communities may have emerged independently of prairie Metis communities. What is the prevailing view? The Sault St. Marie community has had its right to resource use recognized in *Powley*, but what of territory (title)?

**Broader Context:**

To what extent does the Aboriginal rights case law support a constitutional right to negotiate in good faith outstanding claims by Metis communities/regions/nation(s)? This approach is the one that the current legal doctrine and legal community feels obliged to apply. However, in examining the issues solely from a doctrinal perspective of Aboriginal rights domestic "Canadian' jurisprudence would be inherently flawed because it would ignore the increasingly significant critical literature that challenges the very core of this doctrine and its continued legitimacy.

Appreciating that Aboriginal rights doctrine as interpreted by the SCC is fundamentally flawed from a critical human rights perspective, (LaForme,) it is my intent to outline the reasons for a critical perspective in the application of the "law" as an integral part of this thesis. I intend to critically appraise the "law" from a political rights perspective that does not begin from the premise that Aboriginal peoples were inferior or that the Crown could domesticate legal relations by ignoring the sovereign (for lack of a better concept) status of the nations or communities Indigenous.

Thus, a search for an alternative legal regime(s), becomes necessary in examining the question of outstanding treaty obligations in relation to the British/Canadian State. International law principles, the Declaration of the Rights of Indigenous Peoples, RCAP reforms and recommendations are anticipated to be, among others,

sources for reconstruction of a decolonial theory from which to consider outstanding Metis “rights” claims.

Ultimately, I wish to determine to whom does the Crown owe treaty negotiation obligations? In assessing this question, I will then consider the obligation to negotiate treaty with Metis communities/peoples.